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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,089	09/19/2006	Simon Walker	PP012US1	3955

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PEAK INNOVATIONS INC.  
ATTN: IP LEGAL DEPARTMENT  
203 - 11782 HAMMERSMITH WAY  
RICHMOND, BC V7A-5E2  
CANADA

EXAMINER
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DARNER, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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08/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,089	<b>Applicant(s)</b> WALKER, SIMON	
	<b>Examiner</b> CHRISTOPHER J. DARNER	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/19/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because the abstract should not be longer than 150 words. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claim 1, 4, 6, 7, 8, 9, 11, 12, 13, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Curtis (U.S. Patent # 7,188,821 B2).**

With respect to claim 1, Curtis discloses a railing post (44) having first and second ends in Figure 1. Curtis discloses a post base (8) connectable to said first end of said railing post (44), said post base comprising an inner member steel (30) and an outer member aluminum (50), said inner member being substantially embedded within

said outer member, said inner member comprising a first material and said outer member comprising a second material in Figure 3.

With respect to claim 4, Curtis discloses comprising fasteners (26) for connecting said post base to said railing post in Figure 2A.

With respect to claim 6, Curtis discloses a railing post (44) with first and second ends in Figure 1. Curtis discloses a railing post comprising an elongated tubular body in Figure 3. Curtis discloses an insert (42) snugly insertable within said first end of said railing post.

With respect to claim 7, Curtis teaches a post base (8) connectable to said first end of said railing post (44) in Figure 3.

With respect to claim 8, Curtis discloses said insert further comprises an engagement member (the bottom) in Figure 3.

With respect to claim 9, Curtis discloses comprising fasteners (26) for connecting said post base to said railing post in Figure 2A.

With respect to claim 11, Curtis discloses a railing post (44) having first and second ends in Figure 1. Curtis discloses a post base (8) connectable to said first end of said railing post (44), said post base comprising: a base member (10) and a housing member (12) connected to and extending from said base member, said housing member adapted to engage said railing post at column 2, lines 48-49 and in Figure 2A. The examiner would like to point out that although the post of Curtis is not disclosed as a railing post, it has the claimed structural features of applicant's claim, therefore it is capable of acting as or being used as a railing post.

With respect to claim 12, Curtis teaches a railing post (44) with first and second ends in Figure 1. Curtis discloses a post base (8) connectable to said first end of said railing post (44), said post base comprising an inner member (30) and an outer member (50), said inner member being substantially embedded within said outer member, said inner member comprising a first material and said outer member comprising a second material in Figure 3. Curtis discloses a railing post comprising an elongated tubular body in Figure 3. Curtis discloses an insert (42) snugly insertable within said first end of said railing post.

With respect to claim 13, Curtis discloses said insert further comprises an engagement member (the bottom) in Figure 3.

With respect to claim 16, Curtis discloses comprising fasteners (26) for connecting said post base to said railing post in Figure 2A.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 2, 5, 10, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Curtis (U.S. Patent # 7,188,821 B2).**

With respect to claim 2, Curtis discloses the claimed invention except for first material is steel. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to make the first material from steel in order to provide light weight structural strength to the base, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

With respect to claim 5, Curtis discloses the claimed invention except for the fasteners comprise a dimension of 08 x 80mm. It would have been an obvious matter of design choice to use fasteners with a dimension of 08 x 80mm in order to rigidly secure the post base to the railing post, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

With respect to claim 10, Curtis discloses the claimed invention except for the fasteners comprise a dimension of 08 x 80mm. It would have been an obvious matter of design choice to use fasteners with a dimension of 08 x 80mm in order to rigidly secure the post base to the railing post, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

With respect to claim 14, Curtis discloses the claimed invention except for first material is steel. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to make the first material from steel in order to provide light weight structural strength to the base, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

With respect to claim 17, Curtis discloses the claimed invention except for the fasteners comprise a dimension of 08 x 80mm. It would have been an obvious matter of design choice to use fasteners with a dimension of 08 x 80mm in order to rigidly secure the post base to the railing post, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

**4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis (U.S. Patent # 7,188,821 B2) as applied to claim 1 above, and further in view of Damiano (U.S. Patent # 6,712,330).**

With respect to claim 3, Curtis does not teach wherein said second material is aluminum. Damiano teaches wherein said second material is aluminum at column 2, lines 37-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Curtis to include wherein said second material is aluminum as taught by Damiano in order to increase the bending strength of the base and for its good weather resistant properties.

**5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis (U.S. Patent # 7,188,821 B2) as applied to claim 12 above, and further in view of Damiano (U.S. Patent # 6,712,330).**

With respect to claim 15, Curtis in view of Carnahan does not teach wherein said second material is aluminum. Damiano teaches wherein said second material is aluminum at column 2, lines 38-39. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Curtis in view of Carnahan to include wherein said second material is aluminum as taught by Damiano in order to increase the bending strength of the base.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See 892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER J. DARNER whose telephone number is (571)270-3658. The examiner can normally be reached on Monday thru Friday 7:30AM to 4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3633

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Darner/  
Examiner, Art Unit 3633

/Brian E. Glessner/  
Supervisory Patent Examiner, Art Unit 3633